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BURRUSS et al. v. NELSON'S EX'R et al.

Jan. 19, 1922.

[110 S. E. 254.]

1. Wills (§ 694*)—Appointment by Will of Life Tenant under Power Lapsed Where Appointee Died before Life Tenant.—An appointment by will of a life tenant under a testamentary power lapsed on the death of the appointee before the life tenant, and the property passed as on failure to execute power.

2. Specific Performance (§ 121 (2)*)—Enforcement of Parol Contract to Devise Land Depends on Clear and Convincing Proof.—The enforcement in equity of a parol contract to devise land depends on clear and convincing proof.

Appeal from Circuit Court, Orange County.

Suit by M. T. Burruss, administrator of Robert P. Davis, and another, against Octavia Nelson's Executor and others. Decree for defendants, and plaintiffs appeal. Affirmed.

Jas. C. Page, of Richmond, and *W. W. Butzner*, of Fredericksburg, for appellants.

Browning & Browning and *Shackelford & Robertson*, all of Orange, for appellees.

LOWRY v. COMMONWEALTH.

Jan. 19, 1922.

[110 S. E. 256.]

1. Criminal Law (§ 881 (4)*)—General Verdict Sufficient When Indictment in Omnibus Form for Violating Liquor Law.—Though an indictment for the violation of the prohibition law is in the omnibus form prescribed by Acts 1918, c. 388, a general verdict of guilty is sufficient.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 612.]

2. Intoxicating Liquors (§ 132*)—State Law Not Superseded by National Law.—The state prohibition law (Acts 1918, c. 388), is not superseded by the act of Congress known as the Volstead Act.

3. Criminal Law (§ 1213*)—Sentence for Violating Prohibition Law Held Not to Impose Cruel and Unusual Punishment.—A sentence fixing the punishment for violating the prohibition law at six months in jail and a fine of \$500 does not impose cruel and unusual punishment, in violation of the Constitution.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 199.]

Error to Circuit Court, Norfolk County.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

Will Lowry was convicted of violating prohibition law, and he brings error. Affirmed.

The indictment in this case is for violation of the prohibition law, and is in the omnibus form prescribed by chapter 388 of the Acts of 1918. There was a trial by jury and a verdict and judgment accordingly, finding the accused guilty and fixing his punishment at six months in jail and a fine of \$500.

Daniel Coleman, of Norfolk, for plaintiff in error.

Jno. R. Saunders, Atty. Gen., and J. D. Hank, Jr., Asst. Atty. Gen., for the State.

ROBERTS v. ALEXANDRIA WATER CO.

Jan. 19, 1922.

[110 S. E. 261.]

1. Waters and Water Courses (§ 156 (7)*)—**No Right to Tap Water Main under Water Company's Grant of Right to Take Water from Millrace.**—A water company's grant to the one from whom it acquired the water supply of right to take water from the millrace gives no right to take water from the company's water main at a point some distance from the millrace.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 679.]

2. Waters and Water Courses (§ 157*)—**Permission to Tap Water Main Considered a Revocable License.**—Permission by water company to officers thereof, from whom it had acquired the water supply, and to whom it had granted right to take water from the millrace, to tap its water main will, in the absence of further showing, not be considered a grant of additional rights or a construction of the prior grant, but a bare privilege or revocable license.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 374.]

Appeal from Circuit Court of City of Alexandria.

Suit by Fdmund Hunt Roberts against the Alexandria Water Company for injunction. Bill dismissed, and complainant appeals. Affirmed.

Jas. R. & H. B. Caton, of Alexandria, for appellant.

Gardner L. Boothe, of Alexandria, for appellee.

HUBARD & APPLEBY, Inc. v. THACKER et al.

Jan. 19, 1922.

[110 S. E. 263-4.]

1. Mortgages (§ 292 (2)*)—**Mortgagee's Remedy against Purchaser Assuming Mortgage Is in Equity.**—The remedy of a mortgagee against

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.